

## **REMARKS**

In the Office Action dated June 15, 2009, the Examiner states that the claims of this application contain two (2) groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

- Group I    claims 1-46, drawn to a method comprising administering to a subject a poxvirus vector encoding a retrovirus antigen and a cytokine, or a functional homolog, derivative, part or analog of the retrovirus antigen and/or the cytokine.
- Group II   claims 47-62, drawn to a recombinant poxvirus vector comprising a sequence encoding a retrovirus antigen and a cytokine, or a functional homolog, derivative, part or analog of the retrovirus antigen and/or the cytokine.

Further, claims 18, 19, 23, 24, 27, 34, 35, 39, 40, 43, 53, 54, 58, 59 and 62 specifically claim multiple nucleic acid sequences. The Examiner requires Applicants to further elect one SEQ ID NO for a claimed vector, or alternatively, elect one SEQ ID NO for the retrovirus antigen in combination with one SEQ ID NO for a cytokine.

### **Statement of Substance of Interview**

A telephone interview was conducted between the undersigned attorney and the Examiner on September 9, 2009. The undersigned attorney sought clarification of the requirement for sequence election from the Examiner. The Examiner indicated that the requirement for election of sequences applies only to those claims which specifically recite sequences (claims 18-19, 23-24, 27, 34-35, 40, 43, 53-54, 58-59 and 62), and not to claims which do not recite sequences. Further, in the event that this requirement is made final, the claims which specifically recite sequences will be examined to the extent that they read on the elected sequence(s). Applicants wish to thank the Examiner for the courtesy and assistance extended to

Applicants during the interview.

**Election with Traverse**

In order to be fully responsive to the Examiner's restriction, Applicants provisionally elect, Group I, claims 1-46; and SEQ ID NO: 7 as recited in claims 27 and 43. However, pursuant to 37 C.F.R. §§1.111 and 1.143, Applicants hereby traverse the Examiner's requirement for restriction and request reconsideration thereof in view of the following remarks.

The Examiner alleges that the inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features. Specifically, the Examiner contends that the common technical feature among these inventions is a recombinant poxvirus vector encoding a retrovirus antigen and a cytokine. According to the Examiner, such a product is rendered obvious by the combination of Belyakov et al. (1999) and Radaelli et al. (2003). Radaelli et al. allegedly discloses a method of administering a recombinant fowlpox encoding SIV *gag* and *pol* genes. Belyakov et al. allegedly discloses that HIV antigen-specific CTL response by mucosal treatment with a recombinant vaccinia virus expressing HIV envelope protein can be enhanced by co-administering recombinant mouse IL-12 in mice with preexisting immunity to poxvirus. Therefore, the Examiner concludes that the technical feature shared by Groups I and II is not a contribution over the art, thus, the claimed invention cannot be said to have unity of invention.

Applicants respectfully submit that unity of invention, not novelty, is the issue at hand. Applicants should be given the opportunity to argue the merits during prosecution, i.e., whether the claims are novel over prior art. For example, there is no disclosure or suggestion of using the vector recited in the present claims in conjunction with interrupted antiretroviral drug

therapy to delay viral rebound. Restriction of the claims at this stage would deny Applicants such an opportunity.

Further, as the Examiner has acknowledged, the vector of Group II and the method of Group I relate to each other as product and process of use. Therefore, the two groups simply represent different aspects of a single invention warranting examination in a single application.

Applicants respectfully submit that a determination to make the pending restriction requirement final must evidence the patentable distinctness of the two defined groups, and the sequences, one from another, as presented by the Examiner.

### **Conclusion**

It is respectfully submitted that the present claims satisfy the requirements for unity of invention. Applicants respectfully urge that the Examiner reconsider and withdraw the requirement for restriction and provide an action on the merits with respect to all pending claims.

Respectfully submitted,

/Xiaochun Zhu/  
Xiaochun Zhu  
Registration No. 56,311

SCULLY, SCOTT, MURPHY & PRESSER, P. C.  
400 Garden City Plaza-STE 300  
Garden City, New York 11530  
(516) 742-4343  
XZ:ab